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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Humboldt and Pawnee City, Nebraska,)
and Valley Falls, Kansas))

JAN 19 2006

MB Docket No. 05-310 Federal Communications Commission
RM-11292 Office of Secretary

To: Office of the Secretary

Attn: Assistant Chief, Audio Division,
Media Bureau

ADDENDUM TO COUNTERPROPOSAL

Viking Enterprises, LLC ("Viking"), licensee of FM station KMXN(FM), Osage City, Kansas, by its attorneys, hereby submits this Addendum to Counterproposal in the above-referenced docket. On January 3, 2006, Viking submitted its Counterproposal in the above-referenced docket (the "Counterproposal"). On January 17, 2006, Cumulus Licensing LLC ("Cumulus") submitted its Reply Comments in the above-referenced docket (the "Reply Comments"). In the Reply Comments, Cumulus argues that the Counterproposal should be dismissed because it failed to include copies of the channel studies referenced in the Engineering Statement included in the Counterproposal. The channel studies in question are submitted herewith at Exhibit A hereto. While Viking deeply regrets any inconvenience caused by the omission of the channel studies, the omission was minor in nature and entirely inadvertent. Moreover, the Counterproposal was technically correct and substantially complete when filed and included all information necessary for the Commission and the public to confirm its compliance with the Commission's spacing rules. Thus, the Counterproposal should not be subject to dismissal as requested by Cumulus but, rather, should be granted in due course.

A. The Counterproposal was Technically Correct and Substantially Complete. As noted above, the omission of the channel studies was clearly a minor inadvertent error and did not render the Counterproposal technically incorrect or substantially incomplete.¹ Regardless of the inadvertent omission of the channel studies, all technical and legal aspects of the Counterproposal were fully correct and complete when filed. The Commission's policy of dismissing counterproposals that are not "technically correct and substantially complete" is intended to remove those counterproposals that are so technically or legally defective as to be incapable of being effectuated on the date of filing.² Such defects include substantial errors and omissions regarding the acceptability of the technical aspects of the counterproposal, not the clearly inadvertent omission of three tables.

In each of the cases cited by Cumulus, for example, the dismissed submission had substantial errors and omissions beyond the omission of a channel study. In *Springdale, Arkansas, et al.*, a staff review of the dismissed proposal, using the reference coordinates provided with the proposal, revealed several significant short-spacings.³ Similarly, the petition for rulemaking described in the *Alpert Letter* included no engineering information apart from the coordinates of the station's licensed site and made no showing that the proposed facilities would place a city grade signal over the proposed community of license.⁴ Likewise, the petition for rulemaking described in the *Oyster Letter* did not specify the channel or site location of the station's pending construction permit or coordinates for the proposed facilities.⁵

¹ See Declaration of Roy P. Stype, III, Carl E. Jones Consulting Engineers, attached hereto at Exhibit B.

² See *Amboy, California, et. al.*, 19 FCC Rcd 12405 (MB 2004).

³ *Springdale, Arkansas, et al.*, 4 FCC Rcd 674, n. 7 (1989).

⁴ Letter from John A. Karousos to Dan J. Alpert, counsel to KERM, Inc. (May 6, 2005) (attached to Reply Comments at Exhibit 1).

⁵ Letter from John A. Karousos to James L. Oyster, counsel to Finger Lakes Radio Group, (Feb. 10, 2005) (attached to Reply Comments at Exhibit 1).

In this case, Cumulus does not allege any substantive errors or defects with respect to the Counterproposal, nor could it do so. As Cumulus itself notes, the channel studies were explicitly *referenced and discussed in the Engineering Statement*. In fact, both the Counterproposal and the Engineering Statement provided the channel, class, and coordinates of the proposed facilities, along with discussions of the applicable Commission spacing rules. Thus, the Commission, which conducts its own independent analysis of a proposal's compliance with the spacing rules, was provided with all information necessary to confirm compliance with the Commission's spacing rules.⁶ Cumulus' claim that it could not have verified the Counterproposal's compliance with the spacing rules, to say the least, is overstating the point. Cumulus is a well-established and highly experienced broadcasting company and is well represented by both legal counsel and consulting engineers. Given the information provided in the Counterproposal and the Engineering Statement, Cumulus easily could have prepared the same studies that Viking did and the Commission will do. Regardless, with the instant submission of the channel studies, Cumulus can no longer claim even this extremely limited burden.

Moreover, the Commission's policy is to place counterproposals on public notice inviting reply comments from the public. Because, as of the date of this filing, the Commission has not yet placed the Counterproposal on public notice, the deadline for reply comments on the Counterproposal has not even been set. It is therefore impossible to assert that Cumulus, or any other party, has been prejudiced in any manner by the inadvertent omission of the channel studies given that (a) they were not necessary to establish compliance, (b) they have now been submitted, and (c) the time for filing reply comments on the Counterproposal has not yet started to run. Nevertheless, to the extent the Commission still believes that any party, including Cumulus, was in any way inconvenienced by Viking's inadvertent omission of the channel

⁶ See *Stype Declaration* at 1.

studies, Viking hereby consents to any extension of time the Commission deems appropriate to allow Cumulus, and any other party, sufficient time to review the channel studies.

B. Dismissal of the Counterproposal Would Not Serve the Public Interest. While any minor inconvenience the parties may have suffered is easily remedied as described above, dismissal of the Counterproposal would be grossly and incurably prejudicial to Viking and would not serve the public interest in any manner. A dismissal of the Counterproposal at this stage in the proceedings would effectively block any consideration of the facilities proposed in the Counterproposal, which, as Viking previously demonstrated, would better serve the public interest. As described in the Counterproposal, the facilities proposed in the Counterproposal represent a preferential allotment of channels under the Commission's FM Allotment priorities and would provide a population of 255,340 with an additional aural service without any loss of existing service.⁷ Although Cumulus' draconian demand that the Counterproposal be dismissed obviously benefits Cumulus, it otherwise deprives the public of the opportunity to receive superior service. Indeed, the cases cited by Cumulus do not support the dismissal of Viking's proposal under such circumstances. Both the *Albert Letter* and the *Oyster Letter* addressed petitions for rulemaking which were dismissed without prejudice and could be filed again by their respective petitioners. In addition, in *Springdale, Arkansas, et al.*, the Commission considered a curative amendment filed by the dismissed petitioner. While the Commission ultimately dismissed the amended counterproposal, the case demonstrates that the Commission will at least consider such curative amendments. To the contrary, the Commission has explicitly stated that "while counterproposals are expected to be technically correct and substantially complete, we do not absolutely prohibit minor curative submissions."⁸

⁷ Counterproposal at 1-4.

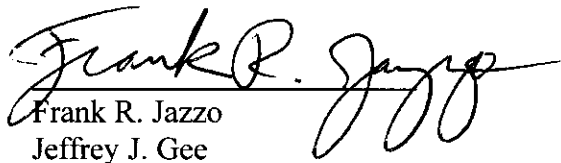
⁸ *Dos Palos, California, et. al.* 19 FCC Rcd 1826, (MB 2004) (citations omitted).

C. Conclusion. As demonstrated in the Counterproposal, the facilities proposed therein would serve the public interest because it would provide new first local service to Holton, Kansas, and would provide a population of 255,340 with an additional aural service without any loss of existing service. As further demonstrated in the Counterproposal, the allotments proposed in Counterproposal are preferential to those proposed by Cumulus in its filings. The sole omission cited by Cumulus was the obviously inadvertent omission of the channel spacing studies, which are provided herewith and clearly support the Counterproposal. Even without these channel studies, however, the Counterproposal was not so clearly technically defective as to require its dismissal. The public should not be deprived of the benefits provided by the Counterproposal due to this inadvertent – and wholly cured – omission. Thus, Viking respectfully submits the instant Addendum to its Counterproposal and requests that the Commission grant the Counterproposal in due course.

Respectfully submitted,

VIKING ENTERPRISES, LLC

By:


Frank R. Jazzo
Jeffrey J. Gee

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1300 North 17th Street
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(703) 812-0400

Its Attorneys

January 19, 2006

Exhibit A
Channel Studies

TABLE J.0

FM ALLOCATION STUDY - CHANNEL 245G2 (96.9 MHz) - HOLTON, KS

VIKING ENTERPRISES, LLC.
HOLTON, KS

STUDY COORDINATES: 39/19/19 95/39/21

STATION	LOCATION	CHANNEL	CLASS	SPACING (km)	REQUIRED SPACING*	NOTES
KACZ	RILEY, KS	242	C3	83.59	56.0	1
KRBZ	KANSAS CITY, MO	243	C0	104.17	89.0	
BNPH20051206AG	HUMBOLDT, NE	244	A	85.51	106.0	3, 7, 11
BNPH20041230AD	HUMBOLDT, NE	244	A	104.59	106.0	1, 2, 3, 11
Q5-139	EMPORIA, KS	244	A	113.52	106.0	9
K88K	MCPHERSON, KS	244	A	205.99	106.0	
RM11292	VALLEY FALLS, KS	245	C2	8.98	190.0	9, 11
RMHM-040*	EFFINGHAM, KS	245	C2	12.07	190.0	9, 11
KZKX	SEWARD, NE	245	C1	223.81	224.0	
KZBK	BROOKFIELD, MO	245	C2	230.91	190.0	
KKOW-FM	PITTSBURG, KS	245	C1	234.86	224.0	
KNIM-FM	MARYVILLE, MO	246	C3	132.59	117.0	
KCXH	LEE'S SUMMIT, MO	247	C1	105.46	79.0	1
KJCK-FM	JUNCTION CITY, KS	248	C1	110.40	79.0	
KOSN	KETCHUM, OK	298	C1	283.79	27.0	
KMAJ-FM	TOPEKA, KS	299	C	39.81	35.0	
KMAJ-FM	SHAWNEE, KS	299	C1	64.12	27.0	1, 2

* Required Spacing Per Section 73.207 of The FCC Rules

Notes:

- | | |
|--------------------------------------|----------------------------------|
| 1 - Applied For Under Section 73.215 | 7 - Pending Application |
| 2 - Construction Permit | 8 - Petition For Reconsideration |
| 3 - Channel Deletion Proposed | 9 - Proposed Rulemaking |
| 4 - Move From This Channel Ordered | 10 - Rulemaking Petition |
| 5 - Move to This Channel Ordered | 11 - Short-Spaced |
| 6 - One Step Reference Site | 12 - Vacant Allotment |

TABLE 1.1

FM ALLOCATION STUDY - CHANNEL 272A (102.3 MHz) - HUMBOLDT, NE (CP SITE)

VIKING ENTERPRISES, LLC.
HOLTON, KS

STUDY COORDINATES: 40/13/55 95/58/17

STATION	LOCATION	CHANNEL	CLASS	SPACING (km)	REQUIRED SPACING*	NOTES
KIOS-FM	OMAHA, NE	218	C1	117.23	22.0	
BNPD020000127A	MARYSVILLE, KS	219	A	77.35	10.0	7
KGOZ	GALLATIN, MO	269	C3	195.59	42.0	
KLTQ	LINCOLN, NE	270	C0	92.78	86.0	
KSRC	KANSAS CITY, MO	271	C0	174.69	152.0	8,9
KSRC	KANSAS CITY, MO	271	C	180.62	165.0	3,8
RMHM-040*	HUMBOLDT, NE	272	A	0.00	115.0	9,11
KZSR	DNAA, IA	272	C1	218.55	200.0	
KRNY	KEARNEY, NE	272	C1	246.85	200.0	
K8LS	NORTH FORT RILEY, KS	273	C1	158.84	133.0	
KSTZ	DES MOINES, IA	273	C	264.33	165.0	
KFRX	LINCOLN, NE	274	C1	87.46	75.0	
KQTP	ST. MARYS, KS	275	C2	130.90	55.0	1

* Required Spacing Per Section 73.207 of The FCC Rules

Notes:

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TABLE 1.2

FM ALLOCATION STUDY - CHANNEL 272A (102.3 MHz) - HUMBOLDT, NE (APPLICATION SITE)

VIKING ENTERPRISES, LLC
HOLTON, KS

STUDY COORDINATES: 40/03/22 95/57/26

STATION	LOCATION	CHANNEL	CLASS	SPACING (km)	REQUIRED SPACING*	NOTES
KANU	LAWRENCE, KS	218	C1	135.91	22.0	
BNPE020000127A	MARYSVILLE, KS	219	A	70.48	10.0	7
KGOZ	GALLATIN, MO	269	C3	191.76	42.0	
KLTW	LINCOLN, NE	270	C0	112.18	86.0	
KSRC	KANSAS CITY, MO	271	C0	160.06	152.0	8, 9
KSRC	KANSAS CITY, MO	271	C	166.69	165.0	3, 8
RMHM-040*	HUMBOLDT, NE	272	A	19.56	115.0	9, 11
KZSR	ONAWA, IA	272	C1	238.03	200.0	
KRNY	KEARNEY, NE	272	C1	252.32	200.0	
KBLS	NORTH FORT RILEY, KS	273	C1	142.29	133.0	
KFRX	LINCOLN, NE	274	C1	103.59	75.0	
KQTP	ST. MARYS, KS	275	C2	111.41	55.0	1

* Required Spacing Per Section 73.207 of The FCC Rules

Notes:

- | | |
|--------------------------------------|----------------------------------|
| 1 - Applied For Under Section 73.215 | 7 - Pending Application |
| 2 - Construction Permit | 8 - Petition For Reconsideration |
| 3 - Channel Deletion Proposed | 9 - Proposed Rulemaking |
| 4 - Move From This Channel Ordered | 10 - Rulemaking Petition |
| 5 - Move to This Channel Ordered | 11 - Short-Spaced |
| 6 - One Step Reference Site | 12 - Vacant Allotment |

Exhibit B

Declaration of Roy P. Stype, III

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

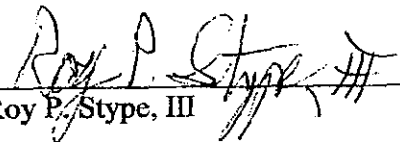
In the Matter of)	
)	
Amendment of Section 73.202(b))	MB Docket No. 05-310
Table of Allotments)	RM-11292
FM Broadcast Stations)	
(Humboldt and Pawnee City, Nebraska,)	
and Valley Falls, Kansas))	

DECLARATION OF ROY P. STYPE, III

I, Roy P. Stype, III, do hereby declare and state under penalty of perjury as follows:

1. I am a graduate Electrical Engineer and a qualified and experienced Communications Consulting Engineer, whose works and qualifications are a matter of record with the Federal Communications Commission;
2. I am a member of the firm of Carl E. Smith Consulting Engineers, which firm was retained by Viking Enterprises, LLC to prepare the Engineering Statement in Support of Counterproposal – MB Docket No. 05-310 (the “Engineering Statement”), which was attached to the Counterproposal in MB Docket No. 05-310 filed by Viking Enterprises, LLC on January 3, 2006 (the “Counterproposal”). The Engineering Statement was prepared by me or under my direction;
3. The channel spacing studies attached to the Addendum to Counterproposal at Exhibit A (the “Channel Studies”), were prepared prior to the submission of the Counterproposal and were intended to be included in the Engineering Statement;
4. The omission of the Channel Studies from the Engineering Statement was entirely due to an inadvertent clerical error;
5. Despite the inadvertent omission of the Channel Studies from the Engineering Statement, the Counterproposal and Engineering Statement included all information necessary for the Commission or any other party to confirm the Counterproposal’s compliance with the Commission’s spacing rules, including the channel, class and coordinates of the proposed facility; and

6. I have reviewed the foregoing Addendum to Counterproposal and to the best of my knowledge, information, and belief the facts contained therein are true and correct.



Roy P. Stype, III

1/19/2006

Date


CERTIFICATE OF SERVICE

I, Michelle Brown Johnson, a secretary at the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that a true copy of the foregoing ADDENDUM TO COUNTERPROPOSAL was mailed, U.S. first class mail, postage prepaid, on this 19th day of January, 2006, addressed to the following:

Helen McLean*
Media Bureau
Federal Communications Commission
445 12th Street, SW, Room 2-B532
Washington, DC 20554

Charles A. Radatz, President
C.R. Communications, Inc.
1602 Stone Street
Falls City, NE 68355

Cumulus Licensing LLC
c/o Mark N. Lipp, Esquire
Vinson & Elkins L.L.P.
1455 Pennsylvania Ave., N.W.
Washington, DC 20004-1008


Michelle Brown Johnson

* via hand-delivery